

Internal Revenue Service

Number: **201338024**
Release Date: 9/20/2013
Index Number: 1362.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-120038-13

Date:
June 20, 2013

LEGEND

X =

D1 =

Dear :

This letter responds to a letter dated April 22, 2013, submitted on behalf of X requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X made an election to be a subchapter S corporation effective on D1. On D1, however, an interest in X was owned by an ineligible shareholder. Steps were taken to transfer such interest in X to eligible shareholders.

X represents that its invalid S corporation election was inadvertent, unintended, and not the result of tax avoidance or retroactive tax planning. X further represents that at all relevant times, X and its shareholders have treated X as an S corporation. X and its shareholders have agreed to make any adjustments required by the Service consistent with the treatment of X as an S corporation.

LAW AND ANALYSIS

Section 1361(a)(1) provides that for purposes of title 26, the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that for purposes of subchapter S, the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not-- (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's election to be treated as an S corporation as of D1 was invalid. We also conclude that the invalid election constituted an inadvertent invalid election within the meaning of § 1362(f). Under the provisions of § 1362(f), X will be treated as an S corporation as of D1 and thereafter, provided that X's S corporation election was not otherwise terminated under § 1362(d).

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, we are sending copies of this letter to X's authorized representatives.

Sincerely,

/s/

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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